

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

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Executive Director

2010 NOV 29 P 2:18

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: NOVEMBER 29, 2010

DOCKET NO.: W-02068A-10-0376

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Opinion and Order on:

EDEN WATER COMPANY, INC.
(EMERGENCY RATES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 8, 2010

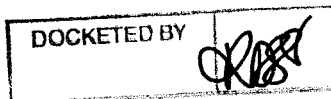
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 14, 2010 and DECEMBER 15, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

NOV 29 2010



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION
9 OF EDEN WATER COMPANY, INC. FOR
10 AN EMERGENCY RATE INCREASE.

DOCKET NO. W-02068A-10-0376

11 DECISION NO. _____

12 **OPINION AND ORDER**

13 DATE OF HEARING: November 17, 2010

14 PLACE OF HEARING: Tucson, Arizona

15 ADMINISTRATIVE LAW JUDGE: Jane L. Rodda

16 APPEARANCES: Mr. Jay D. Colvin, President of Eden Water Co. Inc.;
17 and

18 Ms. Ayesha Vohra, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
20 Corporation Commission.

21 **BY THE COMMISSION:**

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

25 **FINDINGS OF FACT**

26 1. Eden Water Company, Inc. ("Eden" or "Company") is a non-profit customer owned
27 Class D utility providing water service to approximately 129 customers in an unincorporated area of
28 Graham County. Eden obtains its water from Graham County Utilities, Inc. ("GCU").

2. On September 10, 2010, Eden filed a request for emergency rates on the grounds that a
recent water rate increase by GCU created an emergency situation under which Eden is not able to
pay its on-going operating expenses.

1 3. In its emergency application, the Company requested an increase in its monthly
2 minimum of \$4.25, from \$15.75 to \$20.00, for its 5/8 inch meters and a \$10.00 per month increase,
3 from \$25.00 to \$35.00, for its 2 inch meter customers. In addition, the Company sought to increase
4 the commodity charge per 1,000 gallons, by \$0.80, from \$2.70 to \$3.50.

5 4. The Company's proposed rates would increase the typical 5/8 inch meter residential
6 bill with an average usage of 7,500 gallons, from \$36.00 to \$46.25, an increase of \$10.20, or 28.5
7 percent.

8 5. By Procedural Order dated September 27, 2010, a Procedural Conference convened on
9 October 6, 2010, at the Commission's Tucson office. Mr. Jay D. Colvin, the Company's President,
10 appeared on behalf of the Company. The Commission's Utilities Division ("Staff") appeared through
11 counsel. During the Procedural Conference, the parties discussed the timeframe for processing the
12 emergency rate application, the need for public notice and for authorization from the Company's
13 Board of Directors to allow Mr. Colvin to represent the Company in this proceeding.

14 6. By Procedural Order dated October 7, 2010, the matter was set for hearing on
15 November 16, 2010, at the Commission's Tucson offices; the form of public notice was delineated;
16 and other procedural guidelines were established.

17 7. Eden states that it mailed the notice of the hearing to its customers on October 13,
18 2010.

19 8. On November 17, 2010, a Board of Director authorization allowing Mr. Colvin to act
20 on behalf of the Company in this emergency rate proceeding was docketed.

21 9. On November 5, 2010, Staff filed a Staff Report in this matter, concluding that the
22 GCU rate increase created an emergency condition pursuant to Attorney General Opinion No. 71-17,
23 and recommending that an emergency surcharge of \$0.41 per 1,000 gallons be approved on an
24 interim basis.

25 10. The Commission convened the hearing on November 16, 2010, as scheduled,
26 however, due to a misunderstanding, the Company was not present. The Administrative Law Judge
27 went on the record for the purpose of noting that it was the time noticed for public comment. There
28 were no members of the public present to give comment, nor has the Commission received any

1 written comments from Eden's customers related to the requested increase. Subsequently,
2 arrangements were made for the Company and Staff to appear telephonically for a hearing on
3 November 17, 2010.

4 11. On November 17, 2010, the Company and Staff appeared for a telephonic hearing. Mr.
5 Jay D. Colvin and Ms. Sebrina Davis testified for Eden, and Mr. Darak Eaddy and Ms. Dorothy
6 Hains testified for Staff.

7 12. Eden's current rates were authorized in Decision No. 59261 (September 1, 1995).

8 13. GCU's water rates were increased from \$1.51 per 1,000 gallons, to \$1.92 per 1,000
9 gallons effective May 1, 2010.

10 14. Eden states that the increase in rates was higher than expected and that since the
11 increase in rates, Eden has not been able to meet its monthly operating expenses. At the hearing, Mr.
12 Colvin and the Company's office manager, Sebrina Davis, testified that the Company has not been
13 able to reimburse Mr. Colvin for repairs he has made to the system or to pay Ms. Davis the full
14 amount it owes her in October and November. In addition, Eden has been making partial payments
15 to GCU since October 2010.

16 15. The Company submitted financial statements for 2009, which indicate in that year, the
17 Company experienced an operating loss of \$10,603.¹

18 16. Mr. Colvin stated that the Company has been aware for some time that it needed a rate
19 increase, but that it believed it should wait until GCU completed its rate application to ensure that the
20 new GCU water rates were reflected in Eden's application. Although the Company was operating at
21 a deficit, it used its cash flow from depreciation to meet its operating needs. According to Mr. Colvin,
22 after the GCU increase, Eden's cash flow was no longer sufficient to carry it until it could file and
23 complete a permanent rate case.

24 17. Staff calculated that under the Company's proposed emergency surcharges and based
25 on the 2009 water sold amount of 17,493,000 gallons, the Company would receive an additional
26 \$18,044.50 in annual revenue.

27 18. In its Staff Report, Staff recommends an emergency surcharge of \$0.41 per 1,000

28 ¹ Does not include Depreciation Expense.

1 gallons. Under Staff's recommendation, the Company would generate additional revenue of
2 \$7,172.13 (based on 2009 gallons sold) which would offset the amount of the increased cost of water
3 from GCU.

4 19. Staff's recommended rates would increase the typical 5/8 inch meter residential bill
5 with average usage of 7,500 gallons, from \$36.00 to \$39.08, an increase of \$3.08, or 8.6 percent.

6 20. Staff agrees with the Company that an emergency situation exists as set forth in
7 Attorney General Opinion 71-17 because Eden experienced a situation of sudden change that has
8 brought hardship to the Company as its ability to maintain service, pending a formal rate
9 determination is in serious doubt.²

10 21. Staff states that it did not recommend the Company's proposed rate design for its
11 emergency surcharge because typically, in the interest of simplicity, Staff does not design emergency
12 surcharges to affect both the commodity and monthly minimum rates. Staff believes that simplicity in
13 rate design is preferable given the lack of financial information.

14 22. In the Staff Report, Staff explains that it recommended a surcharge to generate the
15 additional revenue needed to address the emergency situation and that the Company did not request
16 or provide information for coverage of any additional costs beyond the GCU resale water rate
17 increase. Staff believed that its recommended emergency surcharge of \$0.41 per 1,000 gallons of
18 usage is the most appropriate way to address the financial emergency.

19 23. During the hearing, the Company provided additional information about its financial
20 condition, and as directed by the Administrative Law Judge, submitted financial statements through
21 October 31, 2010, as well as outstanding invoices. The unaudited (and not yet reviewed by Staff)
22 financial statements show that for the ten months ended October 31, 2010, Eden had a loss, not
23 including depreciation expense, of \$5,487. Eden's greatest expense is purchased water. In October
24 2010, GCU billed Eden \$4,743 for water, of which, after contacting GCU about its situation, Eden
25 has been able to make partial payments of \$3,000. At the time of the hearing, Eden has outstanding
26 invoices to CKC Construction and Materials for work relating to a leak repair in September 2010, in
27 the amount of approximately \$766. In addition, the Company has not reimbursed Mr. Colvin for

28 ² Staff Report at 3.

1 work he performed for Eden repairing a leak and installing a meter in the amount of \$1,182. The
2 Company has not paid all that it owes Ms. Davis for bookkeeping and meter reading for October and
3 November 2010, with an outstanding amount of approximately \$1,800.

4 24. Arizona Attorney General Opinion 71-17 discusses the standards necessary for the
5 Commission to establish interim rates without a finding of fair value rate base. Interim rates may be
6 authorized as an emergency measure when sudden change brings hardship to a company, when the
7 company is insolvent, or when the condition of the company is such that its ability to maintain
8 service pending a formal rate determination is in serious doubt.

9 25. The information submitted by the Company in support of its emergency application
10 indicates that it is probable that Eden has been in the need of a rate increase for some time. Its
11 apparent operating losses have been further exacerbated by the recent increase in the cost of its
12 purchased water. The increase in the cost of its water source is a sudden change that has brought
13 hardship, as demonstrated by Eden's inadequate cash flow. Further, the unaudited financial
14 statements indicate that the Company's liabilities exceed its assets, and the Company may be
15 considered insolvent, either because of its negative net worth or because of its ability to meet on-
16 going financial obligations. Eden's current situation qualifies for the authorization of interim
17 emergency rates, subject to refund pending the determination of a permanent rate case.

18 26. Staff's recommended interim surcharge would permit the Company to meet the
19 increased cost of water on an on-going basis, but would not produce any additional revenue to permit
20 the Company to pay down its outstanding accounts payable. Staff did not have the opportunity to
21 review the additional invoices that the Company's witnesses described at the hearing and which it
22 submitted post-hearing. Staff's approach is reasonable and fair based on the information available to
23 Staff at the time it prepared its report. Based on the entirety of the record, Eden appears to need
24 additional revenue to avoid accruing additional accounts payable which would be difficult to pay
25 down even after a permanent rate increase. As of the middle of November, the Company owes GCU
26 approximately \$1,700 for water from October; \$1,800 to Ms. Davis; \$765 to CKC Construction³ for

27 ³ Eden submitted a schedule which indicates approximately \$1,666 owing to CKC construction, but the supporting
28 invoices indicate a possible double counting of the September 8, 2010 repair costs. See invoice #C623 and statement
dated September 30, 2010.

1 work done repairing a leak; and about \$1,100 to Colvin Farms also related to leak repair. The
2 increase in the water expense appears to have prevented the Company from paying these expenses
3 which are for services necessary for the Company to be able to provide safe and reliable water. The
4 Company submitted additional invoices indicating that it has bills outstanding for water testing
5 expenses and that it owes Mr. Colvin and Ms. Davis for expense reimbursements, but the record does
6 not allow the determination that these bills are either past due or that they were for services related to
7 the provision of water.⁴

8 27. In order to prevent further deterioration of the financial condition of Eden pending a
9 final determination of a permanent rate case, annual revenue of \$5,300 in addition to the increase
10 needed for the cost of purchased water is reasonable, necessary and in the public interest. Because
11 emergency rates are subject to refund, and authorized without an audit of the Company's records, it is
12 important to grant only such relief as is necessary to allow the Company to continue to provide safe
13 and reliable service pending the determination of a permanent rate case.

14 28. Consequently, we authorize an emergency interim surcharge comprised of a \$1.25 per
15 month customer charge for the 5/8 inch meter and \$4.00 per month customer charge for the 2 inch
16 meter, and an additional commodity charge of \$0.60 per 1,000 gallons. On an annual basis, and based
17 on 2009 water usage of 17,493,000, and 127 5/8-inch meters and 2 2-inch meters, the interim
18 surcharge would generate additional revenue of approximately \$12,460, of which \$7,172 offsets the
19 increased cost of purchased water.

20 29. The interim surcharge will increase the monthly bill of a 5/8 inch meter customer
21 using 7,500 gallons of water a month, by \$5.75, or 15.9 percent, from \$36.00 to \$41.75.

22 30. In addition to the interim surcharge, Staff recommended that:

- 23 a. the interim surcharge be subject to refund pending the Decision on the permanent
24 rate increase;
- 25 b. the Company file with Docket Control, as a compliance item in this docket, within
26 30 days of an Order in this proceeding, a revised rate schedule reflecting the
emergency surcharge;

27 ⁴ It should not be inferred that there is anything improper about these invoices or that they would not be allowed as
28 appropriate expenses in a permanent rate case. In the context of the extraordinary relief of an emergency rate surcharge,
when Staff has not audited the books and records of the Company, it is not appropriate to include them in calculating the
appropriate interim surcharge.

- c. the Company notify its customers of the revised rates and their effective date, in a form acceptable to Staff, by means of an insert in the Company's next regularly-scheduled bill;
- d. the Company file a full rate application within 6 months of the Decision issued in the instant case;
- e. the Company file with Docket Control, as a compliance item in this docket, documentary evidence that the Company has posted a bond, an irrevocable sight draft letter of credit, or cashier's check in the amount of \$20.00, prior to implementation of the emergency rate increase authorized in this proceeding;
- f. the Company monitor its system and record the gallons purchased and sold to determine the non-account water for calendar year 2010, and that the Company coordinate when it reads the source meters each month with when it reads the customer meters so that an accurate accounting of the water pumped and the water delivered to customers is determined. Staff recommends that the results of this monitoring and reporting be included in the Company's 2011 Annual Report filed with the Commission, and if the reported water loss is greater than 10 percent, the Company should prepare a report containing a detailed analysis and plan to reduce water loss to 10 percent or less. If the Company believes it is not cost effective to reduce the water loss to less than 10 percent, it should submit a detailed cost benefit analysis to support its opinion. In no case does Staff believe the Company should allow water loss to be greater than 15 percent. The water loss reduction report or the detailed analysis, whichever is submitted, shall be docketed as a compliance item within 180 days of the effective date of the Order issued in this proceeding;
- g. the Company file with Docket Control, as a compliance item in this docket, documentation from the Arizona Department of Water Resources ("ADWR") showing compliance with ADWR requirements. Staff further recommends that this documentation be filed within 90 days of the effective date of the Commission's Decision in this matter; and
- h. the Company file a curtailment tariff as soon as possible, but no later than forty-five (45) days after the effective date of the Decision in this matter.

31. The Company did not object to Staff's recommendations

32. In Decision No. 61894 (August 27, 1999), the Commission authorized Eden to borrow up to \$118,085 from the Water Infrastructure Finance Authority for the purpose of installing a 6 inch main to connect with GCU in order to improve water pressures needed for fire flow requirements. The authorization was conditioned upon Eden first providing evidence that it could not obtain a grant or lower cost loan from the USDA Rural Development.

33. Eden ultimately obtained a loan from Rural Development in the amount of \$95,000. The loan matures in 2041 and bears an interest rate of 4.5 percent. The Company has annual interest of \$3,764 and an annual principal payment of \$1,420 associated with this loan.

34. Decision No. 61894 also ordered Eden to file for a rate review or rate increase within six months of the date on which the loan is fully drawn. At that time, the Commission expressed concerns that Eden's current rates might not be sufficient to cover its debt service on a long-term basis.

35. Eden did not file for a rate review or rate increase as directed by Decision No. 61894. If Eden had made the requisite filing, its current emergency situation may have been avoided. The Company states that it delayed filing a rate case while GCU was determining how to address arsenic treatment. The Company acknowledged at the hearing that it should have filed the rate review or rate case under Decision No. 61894 and apologized for its error. Mr. Colvin testified that at the time, the Company had a different manager, who was suffering from serious health related problems and who is now experiencing memory issues.

36. Staff did not recommend that any action be taken against the Company as a result of its non-compliance as part of this proceeding. It appears by statements made during this proceeding that Mr. Colvin now has a better understanding of the Company's obligations under Commission Orders. In addition, the health-related problems of the previous manager are a mitigating circumstance, and the Company is now being managed by Mr. Colvin. The Company's status as a member-owned cooperative also mitigates against further action for its non-compliance at this time. However, the Company is now on notice that it has an obligation to comply with all Commission Orders, and that if it believes that it needs more time to comply with Commission Orders, it must seek a waiver or modification of the Order prior to the compliance deadline.

37. According to the Staff Report, the Commission's Consumer Services Section has not received any complaints related to Eden since January 1, 2007, and the Company is in good standing with the Commission's Corporations Division.

CONCLUSIONS OF LAW

1. Eden is a public service corporation pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

2. The Commission has jurisdiction over Eden's operations and the subject matter of the application.

3. Notice of the proceeding was provided in conformance with law.

4. Eden is facing an emergency within the definition set forth in Attorney General Opinion No. 71-17.

5. The emergency rate increase as determined herein is just and reasonable on an interim basis and should be implemented.

6. The recommendations set forth in Findings of Fact No. 30 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Eden Water Company Inc.'s application for an emergency interim surcharge, as described herein, is approved.

IT IS FURTHER ORDERED that on or before December 31, 2010, Eden Water Company, Inc. shall file a tariff for an interim surcharge consistent with the following:

<u>Meter Size</u>	<u>Monthly Interim Surcharge</u>
5/8 inch meter	\$1.25
2 inch meter	\$4.00
Commodity Surcharge (per 1,000 gallons): \$0.60	

IT IS FURTHER ORDERED that the interim emergency surcharge shall become effective on January 1, 2011, or the first of the month following Eden Water Company Inc.'s compliance with the requirement to post a bond, letter of credit or cashier's check as required herein, whichever is later.

IT IS FURTHER ORDERED that Eden Water Company, Inc. shall mail notice of the approved interim emergency surcharge to its customers, in a form and manner acceptable to Staff, with its next regularly scheduled bill or by separate mailing within thirty (30) days of the effective date of this Decision.

IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject to refund pending resolution of the required permanent rate case.

IT IS FURTHER ORDERED that Eden Water Company, Inc. shall file an application for a permanent rate increase no later than six months from the effective date of this Decision.

IT IS FURTHER ORDERED that Eden Water Company, Inc. shall provide to the Commission's Business Office for safekeeping, the original of an irrevocable sight draft letter of

1 credit, performance bond, or cashier's check in the amount of \$20.00, and file 13 copies with Docket
2 Control, as a compliance item in this docket, prior to implementing the emergency rate increase
3 authorized herein.

4 IT IS FURTHER ORDERED that Eden Water Company, Inc. shall monitor its system and
5 record the gallons purchased and sold to determine the non-account water for calendar year 2010, and
6 that it should coordinate when it reads the source meters each month with when it reads the customer
7 meters so that an accurate accounting of the water pumped and the water delivered to customers is
8 determined; shall include the results of this monitoring and reporting in Eden Water Company Inc.'s
9 2011 Annual Report filed with the Commission; and if the reported water loss is greater than 10
10 percent, Eden Water Company, Inc. shall prepare a report containing a detailed analysis and plan to
11 reduce water loss to 10 percent or less. If Eden Water Company, Inc. believes it is not cost effective
12 to reduce the water loss to less than 10 percent, it shall submit a detailed cost benefit analysis to
13 support its opinion. In no case shall Eden Water Company, Inc. allow water loss to be greater than
14 15 percent. If required, the water loss reduction report or the detailed analysis shall be docketed as a
15 compliance item in this docket within 180 days of the effective date of the Order issued in this
16 proceeding.

17 IT IS FURTHER ORDERED that within 90 days of the effective date of this Order, Eden
18 Water Company, Inc. shall file with Docket Control, as a compliance item in this docket,
19 documentation from the Arizona Department of Water Resources showing compliance with ADWR
20 requirements.

21 ...

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28 ...

1 IT IS FURTHER ORDERED that Eden Water Company, Inc. shall file a curtailment tariff as
2 soon as possible, but no later than forty-five (45) days after the effective date of this Decision.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN

COMMISSIONER

9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
11 Executive Director of the Arizona Corporation Commission,
12 have hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2010.

15 ERNEST G. JOHNSON
16 EXECUTIVE DIRECTOR

17 DISSENT _____
18

19 DISSENT _____
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1 SERVICE LIST FOR: EDEN WATER COMPANY, INC.

2 DOCKET NO.: W-02068A-10-0376

3

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